

SA2003 RFO050

October 17, 2003

Ms. Tricia Knight
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary for Proposed Initiative

Dear Ms. Knight:

Pursuant to Article II, Section 10(d) of the California Constitution, we are submitting the attached proposed statewide ballot measure "The Family Communication Act" to your office and request that you prepare a title and summary of the measure as provided by law. We have also included with this letter the required signed statement under California Elections Code section 9608, and a check in the amount of \$200.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact Mr. Mark Bucher, Bucher & Palmer, 18002 Irvine Blvd., Tustin, CA 92780, Phone: (714) 619-6868.

Very Truly Yours,

Rosemarie I. Avila

Mary L. Vogelzang

AFFIDAVIT

I, Rosemarie I. Avila, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Rosemarie I. Avila

Dated this 17th day of October, 2003

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AFFIDAVIT

I, Mary L. Vogelzang, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Mary L. Vogelzang

Dated this 17 day of October, 2003

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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

The Attorney General of California has prepared the following title and summary of the chief purposes and points of the proposed measure:

[insert 500 word title and summary]

To the Honorable Secretary of State of California:

We the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose an amendment to the Constitution of the state of California and a statutory amendment to the Health and Safety Code relating to parental notification prior to the performance of an abortion on a pregnant minor, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed amendment reads as follows:

SECTION 1. Title.

This amendment shall be known and may be cited as the Family Communication and Parental Responsibility Act.

SECTION 2. Declarations of Findings and Purposes.

(a) The People of California have a special and compelling interest in, and responsibility for, protecting the health and well-being of children, ensuring that parents are timely informed of potential health-related risks to their children, and promoting the parent-child relationship.

(b) The People find that there exists a compelling and important State interest in protecting minors, in fostering the family structure and preserving it as the primary social unit, and in protecting the rights of parents and children. A minor faced with the medical, psychological and emotional decisions related to an unplanned pregnancy, is better able to make fully informed decisions with serious and lasting consequences after open communications with her parents. Such communication protects against the undue

influence of adult men who seek to avoid discovery of their sexual exploitation of minors, insures adult guidance and support in the selection of abortion providers, as well as careful monitoring for post-abortion complications. Currently, a pregnant minor, as young as 13 or 14, can now obtain an abortion without any notification to her parents whatsoever.

(c) The United States Supreme Court has upheld the constitutionality of parental notification.

SECTION 3. Parental Notification

Section 32 of Article 1 of the California Constitution is added to read:

SEC. 32. Notwithstanding Article 1, Section 1, or any other provision of this Constitution, except in a medical emergency requiring immediate medical action, or when a waiver of notification has been obtained pursuant to state law, no abortion shall be performed upon a pregnant unemancipated minor until the physician has first provided notice to one of her parents or to her legal guardian pursuant to state law. Nothing in this Section shall be construed to grant, secure, or deny any right relating to abortion or the funding thereof.

Section 123450 of the Health and Safety Code is added to read:

Section 123450. (a) For purposes of this section and this Act, the following terms shall be defined to mean:

(1) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription or means is not an abortion if done with the intent to:

- (A) save the life or preserve the health of the unborn child,
- (B) remove a dead unborn child caused by spontaneous abortion; or
- (C) remove an ectopic pregnancy.

(2) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(3) "Notice" means a written notification, signed by a physician or his or her agent and addressed to a parent, informing the parent that the unemancipated minor is pregnant and that she has requested an abortion.

(4) "Parent" means the parent with primary custody, care and control of the unemancipated minor, or a parent with joint custody, care and control; or if there is no parent with primary custody, care and control, or if there is no parent with joint custody, care and control, then the legal guardian of the unemancipated minor.

(5) "Unemancipated minor" means a female under the age of 18 years who is unmarried and is not currently serving active duty in one of the military services of the United States of America, or a female for whom a guardian has been appointed because of a finding of incompetency, or a female who has not been declared emancipated pursuant to state law. For the purposes of this section, pregnancy does not emancipate a female under the age of 18 years.

(b) Notwithstanding any other provision of law to the contrary and except as provided in subdivision (e), an abortion shall not be performed upon a pregnant unemancipated minor until written notice has been delivered pursuant to subdivision (c), or at least 48 hours after written notice has been delivered pursuant to subdivision (d), or until the physician has received a copy of a waiver of notification from the court as provided in subdivision (g) of this section. The physician shall inform the unemancipated minor that her parent may receive notice as provided for in this section.

(c) The notice shall be delivered to the parent personally by the physician or his or her agent.

(d) In lieu of the personal delivery required in subsection (c) of this section, notice may be made by certified mail addressed to the parent at the parent's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. The 48 hour period for notice sent under the provisions of this subsection shall begin at noon on the next day on which regular mail delivery takes place following the day on which the mailings are posted.

(e) Notice of a pending abortion shall not be required under this act if the attending physician certifies in the unemancipated minor's medical records that the abortion is necessary due to a medical emergency.

(f) If the pregnant minor elects not to permit notification of one or both of her parents or legal guardian, she may file a petition with the juvenile court. If, pursuant to this subdivision, a minor seeks to file a petition, the court shall assist the minor or person

designated by the minor in preparing the petition and notices required pursuant to this section. The petition shall set forth with specificity the minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. The minor may file the petition using only her initials or a pseudonym. No filing fee shall be required for filing a petition. An unemancipated pregnant minor shall appear personally in the proceedings in juvenile court, and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The court may appoint a guardian ad litem for her. The hearing shall be held within 48 hours of the filing of the petition, unless extended at the written request of the minor, her guardian ad litem, or her counsel. A notice shall be given to the minor of the date, time and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision. If the judge fails to rule within the statutory time period and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived. The Judicial Council shall prescribe, by rule, the practice and procedure for such petitions, hearings and entry of judgment as it deems necessary and may prescribe forms for such proceedings, and each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to insure confidentiality of the minors filing petitions, a report, by judge, of the number of petitions filed, the number of petitions granted, the number of petitions denied, and the number of petitions that were deemed granted as the result of the judge's failure to rule within the time period specified by this subdivision, said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by court or by county before being made available to the public in order to preserve the confidentiality of the minors filing petitions.

(g) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature and capable of giving informed consent to decide whether to have an abortion, the judge shall authorize a waiver of notification.

(2) If the judge finds, by clear and convincing evidence, that there is evidence of physical, sexual, or emotional abuse of the minor by the parent or legal guardian, the judge shall authorize a waiver of notification. Notice of a determination made under this paragraph shall be made to the appropriate county child protective agency.

(3) If the judge finds, by clear and convincing evidence, that the minor is not sufficiently mature, and notification of the parent is not in the best interests of the minor, the judge shall authorize a waiver of notification.

(h) If the judge does not make a finding specified in subdivision (g) of this section, the judge shall dismiss the petition or motion.

(i) The minor may appeal the judgment of the juvenile court by filing a written notice of appeal at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the notice of the date, time and place of hearing, which shall be held within three court days of filing the notice of appeal, shall be mailed to the parties by the clerk of the court. The appellate court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. The minor may file the notice of appeal using only her initials or a pseudonym. No filing fee shall be required for filing a notice of appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(j) Any person who performs an abortion in violation of this section shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000. He or she may also be liable for damages and attorney's fees in a civil action brought by a parent wrongfully denied notification. Nothing in this Act shall be construed to limit the common law rights of parents. A person shall not be liable under this act if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

SECTION 4. Severability

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the sections which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.